WP(C) 5309/2006
BEFORE
HON'BLE MR JUSTICE RANJAN GOGOI

JUDGMENT AND ORDER (ORAL)

A resolution dated 26-10-06 passed by the Executive Council of the Gauhati University reiterating an earlier decision for the appointment of the respondent No.4 has been assailed by the petitioner in the instant writ petition.

2. The case has a chequered history and for a better appreciation of the issues involved, the facts, in brief, must be noticed at this stage.

On 10-9-05 an advertisement was issued by the Registrar of the Gauhati University inviting applications for filling up, inter alia, one post of Lecturer in Psychology. Four persons including the petitioner and the respondent No.4 applied. In accordance with the prevailing norms, the applications received were scrutinized by the Head of the Department to determine the eligibility of the candidates as laid down. All the four candidates who applied were found to be eligible. Thereafter, the Bio-datas of the candidates were sent to two experts who were/are working in the Psychology Departments of other universities. The opinion of both the experts i.e. Prof RX Dixit of JNB University, Jodhpur and Prof of Shafique of Jamia Milia University, Delhi are to the effect that both the petitioner as well as respondent No.4 are eligible and further that amongst the candidates who had applied, it is the petitioner who is the most suitable candidate. Thereafter, a meeting of the Selection Committee was convened on 24-7-06 in which both the petitioner and the respondent No.4 were found to be at par in terms of suitability for the post in question. The Selection Committee, therefore, sent both the names to the appointing authority, i.e. the Executive Council for its decision in the matter. The Executive Council in a meeting held on 19-8-06 resolved to appoint the respondent No.4 on the ground that the said respondent has a more meritorious record of academic performance. At this stage the writ petitioner had instituted a writ proceeding before this court registered and numbered as WP(C) No.4189/06. The said writ proceeding was disposed of by this court on 13-9-06 by holding that not only merit but also the opinion of the experts called for by the University and the experience of the candidates would be relevant factors for determining the suitability of the candidates for the post of Lecturer in Psychology. As this court found the decision of the Executive Council in favour of the respondent No.4 to have been taken on the basis of merit alone, the matter was sent back to the Executive Council for a de novo consideration in the light of the observations of the court. The University accepted the aforesaid decision of the court and, thereafter, the Executive Council once again held its deliberations in the matter on 26-10-06. Thereafter, the Executive Council, upon due consideration of the three relevant factors that were required to be taken into account, as noted above, reiterated its earlier decision in favour of the respondent No.4. Aggrieved, the petitioner is back before this court.

3. I have heard Mr SN Sarma, learned senior counsel for the petitioner, Mr LP Sarma, learned counsel for the University and Dr YK Phukan, learned senior counsel for the respondent No.4.

4. Mr Sarma, learned senior counsel for the petitioner has urged that at the resolution dated 26-10-06 of the Executive Council of the University does not reflect the manner of consideration of the case of the petitioner and the respondent No.4 in the light of the yardsticks that were required to be adopted by the said body in terms of the earlier order of this court dated 13-9-06 passed in WP(C) No.4189/06. Mr Sarma has further submitted that no reasons have been recorded by the Executive Council as to why the respondent No.4 has been preferred which fact should be enough to invalidate the said decision of the Executive Council. Arguing further, Mr Sarma by referring to the averments made in paragrap

h 9 of the counter affidavit filed on behalf of the University has submitted tha t the said averments disclose the manner in which the parameters required to be considered by the Executive Council had been so considered. According to the lea rned, counsel even assuming that such a reflection of the manner of consideratio n could come in the form of an affidavit, ex facie, the reasons cited in paragra ph 9 are not tenable in law. In this regard it has been the argument of Mr Sarma that the expert opinions, which is contended by the University to be only for t he purpose of assessment of eligibility, cannot be so construed as the experts w ere also required to give their opinion with regard to suitability of the candid ates. Mr Sarma has argued that according to the University, experience is not a relevant factor inasmuch as for a entry level post like Lecturer there is no req uirement of experience. This, according to the learned counsel, is not correct b ecause as between an experienced and a fresh candidate the choice should be in f avour of an experienced candidate, if there is no other disabling factor. Not on ly that, Mr Sarma by referring to the pleadings made in paragraph 21 of the writ petition has contended that in a similar selection held around the same time fo r the post of Lecturer in Geology the University had preferred experience to mer it which is contrary to the stand taken in the present case. Insofar as merit is concerned, Mr Sarma has submitted that a reading of paragraph 9 of the affidavi t of the University would go to show that the petitioner has been found to be at a somewhat disadvantageous position as she had not cleared NET/SLET. According to Mr Sarma the aforesaid position is further clarified by the University in par agraph 10 of the counter affidavit. In this regard Mr Sarma has submitted that t he petitioner obtained her PhD degree in the year 2000 and, therefore, in terms of the relevant UGC notification dated 31-7-2002 as interpreted by this co urt in WP(C) No.5912 & 6898 of 2004 (Leena B. Dam & Anr vs. State of Assam & Or s) the petitioner is exempted from clearing the NET/SLET. The said facts, acco rding to Mr Sarma, were not taken into account by the University while coming to the conclusion recorded in the resolution dated 26-10-06.

5. Replying to the aforesaid contentions advanced on behalf of the petitioner, Mr LP Sarma, learned counsel for the University as well as Dr YK Phu kan, learned senior counsel for the respondent No.4 have submitted that it is no t obligatory on the part of the Executive Council to record the reasons for its conclusion as to why the respondent No.4 was preferred for appointment. The lear ned counsels have further argued that it cannot be understood, on the basis of t he law as on date, that the appointing authority or the selection body, as the c ase may be, is required to spell out its reasons for the decision taken. The wri t court, according to the learned counsels, is not to sit in judgment over the d ecision of the Appointing Authority or Selection Committee and so long as the re levant factors required to be taken into account had received due consideration of such authority, the ultimate conclusion reached will not be open for interfer ence, even if the court is to take a different view with regard to the conclusio n reached by the authority. In the present case, according to the learned counse ls, the University had reconsidered the matter by taking into account the three factors, i.e. merit, experience and opinion of experts, which were required to b e taken into consideration in terms of the earlier judgment of this court passed in WP(C) No.4189/06. Thereafter, the University came to the conclusion that bet ween the petitioner and the respondent No.4 it is the respondent No.4 who is to be preferred. The court is not to examine the validity of the preference indicat ed; even if the court is to disagree with such preference, the same is not liabl e to be interfered with. The court, according to the learned counsels, is requir ed to examine the validity of the exercise undertaken by the University only to satisfy itself as to whether the relevant materials that are required to be take n into account in the decision making process have been so considered. In the pr esent case as the decision making process clearly satisfies the above requiremen ts and as no extraneous/irrelevant matter had influenced the decision of the Uni versity, the matter should be allowed to rest and ought not to be carried any fu rther, it is argued.

6. The rival submissions advanced on behalf of the respective parties have received the due and anxious consideration of the court. The learned counsels for the respondents are correct in asserting that the Appointing Authority or the Selection Committee, on the law as existing on date, will not be required to give reasons as to why amongst two equally situated persons or amongst a number of candidates who are in the fray, one has been preferred to the other(s). The above view of the court will be consistent with the requirement of absence of arbitrariness as well as the mandate of fairness in the decision making process inasmuch as the relevance of the factors that constitute the basic inputs in the decision making process which will always be subject to judicial scrutiny to determine the intrinsic worth of the ultimate conclusion reached. The above indicated exercise being what a writ court will normally perform, the decision on merit, i.e. the inter se suitability of the candidates, normally will not be a ground for interference, even if this court is to take another view, so long as all relevant factors required to be considered have been gone into in the decision making process.

7. Having understood the law in the above manner, what this court finds from a careful analysis of the entire gamut of relevant facts and circumstances of the case is that according to the University, on due consideration of the three factors required to be considered, the petitioner though experienced, such experience was not taken into account as experience is not a requirement for the post. Insofar as the opinion of the experts is concerned, according to the University, such opinion was only with regard to eligibility and not suitability. Insofar as merit of the candidates is concerned, according to the University, the respondent No.4 is far more meritorious than the petitioner who has also not cleared NET/SLET.

8. While it is correct that for entry level posts like that of Lecturers experience is not a mandatory requirement, yet, between an experienced and a fresh candidate if the choice or preference is for the experienced candidate such a choice will not automatically be unreasonable. However, it is always open for the University to take the view that as experience is not a mandatory requirement the same is not indispensable. If that had been the consistent view of the University in the matter of selection and appointment of Lecturers, the court would have had little to say. A statutory body discharging vital functions in the domain of public law is expected to maintain uniformity in its conduct and actions. In the present case, from the pleadings and materials on record what has been found is that in a similar selection for the post of Lecturer in Geology held around the same time, the less meritorious candidate who however had 11 years of experience was preferred to a candidate who had a consistently brilliant academic record. If experience is not a relevant factor, as has now been asserted, how the University could have acted in the above manner in the selection for the post of Lecturer in Geology defies a rational explanation. Insofar as the opinion of the experts is concerned, the stand of the University is that such opinion is only for the purpose of determination of eligibility and not suitability. The said stand is belied by the letter sent by Prof Shafique of the Jamia Milia University in response to the reference made by the University in the present case. In the said letter it is clearly stated that, as desired by the University, opinion is being tendered that it is the petitioner who, besides being eligible, is also the most suitable candidate. The University, in spite of repeated opportunities offered by the court, has not placed before it the letter addressed by it to the experts to enable the court to examine the correctness of the above stand taken by it. In the absence of the said letter of the University to enable the court to understand the terms of reference to the experts and also taking into account the reply of Prof Shafique, as noted above, the court must hold that the opinion of the experts were sought and tendered both with regard to eligibility and suitability. True, the candidates were tested by a Selection Committee which once again decided on their inter se suitability. However, in the present case the ultimate decision of the Executive Council was required to be taken on due consideration of certain cumulative factors which included the opinion of the ex

perts. If the expert opinion was with regard to suitability also, and the said f actor stood discounted in the decision making process, surely the court must hol d that the decision making process suffers from the vice of non consideration of a very relevant fact.

9. Coming to the question of merit what this court finds is that th e respondent No.4 is definitely better placed in merit than the petitioner. This had also been the view of the court in the earlier writ proceeding, i.e. WP(C) No.4189/06. But what must be remembered is that merit is only one of the factors on which the ultimate conclusion is to be based and definitely not the sole fac tor. That apart, while considering the inter se merit, it appears that the Unive rsity had taken the view that the petitioner has not cleared the NET/SLET, which is a mandatory requirement. How far the said view had influenced the decision o f the Executive Council against the petitioner and in favour of the respondent N o.4 cannot be assessed by the court on the materials available. But that the Uni versity had to mention the said fact in its affidavit in justification of its de cision would indicate that the same had some role to play in the decision making process. It will, therefore, be appropriate for the court to notice that the sa id view suffers from an apparent error inasmuch as the petitioner having obtaine d her PhD degree in the year 2000 she was exempted from clearing the NET/SLET in terms of the relevant notification of the UGC as already noticed hereinabove.

10. The net result of the above discussion is that the resolution of the Executive Council dated 26-10-2006 resolving to appoint the respondent No.4 in the post of Lecturer in Psychology must be held by this court to be not lega lly sustainable. I, therefore, interfere with the said decision of the Universit y and allow this writ petition.